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No. 87-636

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

EFTHIMIOS A. KARAHALIOS,

Petitioner,

v.

DEFENSE LANGUAGE INSTITUTE/FOREIGN LANGUAGE CENTER, OF MONTEREY, AND LOCAL 1263, NATIONAL FEDERATION OF FEDERAL EMPLOYEES,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Do the federal district courts have jurisdiction over claims brought by federal employees covered by the Civil Service Reform Act who allege a breach of the duty of fair representation?

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STATEMENT OF THE CASE

This case presents the question of whether federal district courts have jurisdiction to hear a claim of breach of the duty of fair representation brought by an individual federal employee, whose claim is covered by the Civil Service Reform Act, 5 U.S.C. §7114(a)(1). The question is whether the Federal Labor Relations Authority (FLRA) has exclusive domain over such claims. In the private sector, the duty has been implied from the National Labor Relations Act. In the federal sector this duty is explicit.1/ Petitioner does not challenge that such claims are cognizable before the FLRA; rather, he asserts that a subsequent action may lie in district court if he is not satisfied with the relief granted by the FLRA. 2/

In the federal sector, the duty is enforced through the unfair labor

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1/ "A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership." §7114(a)(1).

2/ Respondent NFFE Local 1263 vigorously disputes the claim that it breached the duty of fair representation owed Karahalios. The merits of the claim were not addressed by the Ninth Circuit, which dismissed on jurisdictional grounds.

practice (ULP) mechanism. 3/ It is an unfair labor practice for a labor organization "to interfere with, restrain, or coerce any employee in the exercise by the employee of any right under this chapter," or "to otherwise fail or refuse to comply with any provision of this chapter [Chapter 71 of Title 5 of the United States Code]." 5 U.S.C. §7116(b)(1) and (8).

When a federal employee believes his union has not represented his interests fairly, he must file a ULP charge with the FLRA. The FLRA General Counsel, who is similar to the NLRB General Counsel, must investigate and either issue a complaint against the union or dismiss the charge. 5 U.S.C. §7118(a)(1). If a complaint is issued and not settled, the respondent has a right to answer and participate in a hearing before an administrative law judge. 5 U.S.C. §7118(a)(3),(5) and (6). 5 U.S.C. §7105(e)(2). If a ULP violation is found, the ALJ shall order the union to pay backpay, if necessary, in accordance with 5 U.S.C.§5596(b); or to take "such other action as will carry out the purpose of this chapter." 5 U.S.C. §7118(a)(7). The findings and orders of the ALJ are reviewable by the FLRA. 5 U.S.C. §7105(f).

Simply stated, this case involves two men and one job; both men sought a promotion to that single position. Simon Kuntelos and Efthimios Karahalios were Greek language instructors at the Defense Language Institute in Monterey, California (hereafter the Institute). Kuntelos became employed with the Institute in 1948; Karahalios in 1958. In 1963 Kuntelos was promoted to course developer, a position he held until 1971 when it was abolished as a result of a reorganization. Kuntelos was reduced in rank and reassigned as a foreign language instructor.

In 1976 a new position was created. Kuntelos was listed as the sole "best qualified" candidate, based on a list of persons eligible for repromotion to this position. Based upon being "best qualified" and his status as eligible for repromotion, Kuntelos believed he was entitled to be selected non-competitively. Instead of selecting Kuntelos

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3/ Likewise, a federal employer's refusal to abide by a provision of the collective bargaining agreement or by an arbitration award is only redressable through the ULP procedure. *Columbia Power Trades v. U.S. Department of Energy*, 671 F. 2d 325 (9th Cir. 1982); *Yates v. U.S. Soldiers' and Airmen's Home*, 553 F. Supp 461 (D.D.C. 1982)

automatically, the Institute's selecting official requested a competitive list of candidates. In connection with his evaluation under competitive procedures, Kuntelos was asked by the institute to take a teaching knowledge test. He objected and declined to take the test. Karahalios was the only employee who took the test and he was selected for the position in April, 1977.

Kuntelos filed a grievance, alleging a violation of the collective bargaining agreement and of government regulations. On August 7, 1977 Arbitrator Alvin Goldman sustained the grievance and ordered that the course developer position be declared vacant. The arbitrator held that Kuntelos' rights to a non-competitive selection had been violated. In connection with filling the position anew, Kuntelos took the teaching knowledge test, although he believed that this requirement violated the arbitrator's award. Kuntelos scored 83 and he and Karahalios, who had earlier scored 81, were referred to the selecting official. Kuntelos was selected and Karahalios was reduced in rank and reassigned to his former position on May 5, 1978. In October 1979, the course developer position was again abolished and Kuntelos was reassigned back to an instructor position.

Karahalios filed two grievances and was represented by NFFE Local 1263. After his grievance was denied at the ultimate step of the grievance procedure, he requested that the Local invoke arbitration. The grievance file was reviewed by Local 1263's outside counsel, Saul Weingarten, who advised the Local that Karahalios' grievances lacked merit and that in any event a conflict of interest existed since the union had already successfully arbitrated Kuntelos' grievance over the filling of the course developer position. On January 9, 1979 the Union Executive Board convened to decide whether to invoke arbitration on behalf of Karahalios. Board members reviewed both arbitrator Goldman's decision and attorney Weingarten's opinion. The Board unanimously decided that invoking arbitration on Karaholios' grievances would be inconsistent with its successful arbitration of the Kuntelos grievance. Karahalios was informed of the decision by letter.

Karahalios filed a ULP against the Institute and the union for refusing to arbitrate the grievances. The Regional Director of the FLRA dismissed both charges. Karahalios appealed to the FLRA's General Counsel who reversed the Regional Director's ruling only with respect

to the charge against the union. The General Counsel found that grounds existed for pursuing a complaint against the union for breach of its duty of fair representation under 5 U.S.C. §7114(a)(1) and §7116(b)(1) and (8). Once the matter was returned to the Regional Office the Union agreed to a settlement. The Union agreed to post a notice to all members stating that it would not discriminate among bargaining unit members. Because the settlement provided no personal or monetary relief for Karahalios, he protested the settlement to the General Counsel. After the General Counsel upheld the settlement agreement, Karahalios filed the instant lawsuit.

REASONS FOR DENYING THE PETITION.

1. CONGRESS INTENDED THAT THE FLRA WOULD HAVE EXCLUSIVE JURISDICTION OVER DUTY OF FAIR REPRESENTATION ACTIONS BROUGHT BY FEDERAL EMPLOYEES AGAINST THEIR EXCLUSIVE REPRESENTATIVES.

The contours of labor relations in the federal sector were laid down by the Civil Service Reform Act of 1978, Pub.L. 95-454 (CSRA or the Reform Act). The CSRA created the Federal Labor Relations Authority (FLRA), an independent executive branch body which performs a role in the federal sector analogous to that of the National Labor Relations Board in the private sector. *See H.R. Rep. No. 95-1403, 95th Cong., 2d Sess. 41 (1978)*. Among its powers, the FLRA adjudicates negotiability disputes, determines appropriate bargaining units, supervises representational elections, resolves exceptions to arbitration awards and resolves unfair labor practice complaints. 5 U.S.C. §7105.

By the time the CSRA was enacted, the duty of fair representation was a recognized facet of federal labor law. *See Steele v. Louisville and Nashville Railroad*, 323 U.S. 192 (1944); *Vaca v. Sipes*, 386 U.S. 171 (1967). In enacting the CSRA, Congress was cognizant of the development of this doctrine, and in a sharp departure from private sector law, codified this duty in the statute governing labor relations in the federal sector. 5 U.S.C. §7114(a)(1),

clause 2. 4/ It is an unfair labor practice for a union to violate this duty. 5 U.S.C. §7116(b)(8). Correspondingly, and in contrast to private sector law, complaints of breaches of this duty must be resolved exclusively through the procedures of the Reform Act. 5/ Contrary to Karahalios' arguments, a federal employee who feels his union has violated the duty of fair representation is limited to the unfair labor practice procedure, which provides for review by a circuit court. *See* 5 U.S.C. §7123.

The CSRA permits judicial intervention into labor relations matters in only three instances. The FLRA may seek enforcement of its adjudicatory orders in the federal courts of appeals. 5 U.S.C. §7123(b). Aggrieved persons, including unions and federal agencies, may seek judicial review of any final FLRA decision in those same courts. 5 U.S.C. §7123(a). Finally, upon issuance of an unfair labor practice complaint, the FLRA may petition a federal district court for temporary injunctive relief. 5 U.S.C.§7123(d).

Notably absent is an analogue to §301 of the Taft-Hartley Act, 29 U.S.C. §185, which allows unions to sue and be sued in federal district court. The absence of such a provision was critical to the outcome in *Warren v. Local 1759, American Federation of Government Employees*, 764 F.2d 1395, 1398 (11th Cir. 1985), *cert. denied*, 106 S.Ct. 527 (1985), and in the decision of the Ninth Circuit, Pet. for Cert., 9a, which held that the FLRA had exclusive jurisidiction over these claims. The Ninth Circuit recognized that the House version of the Reform Act, which authorized "any party to a collective bargaining agreement," aggrieved by the other party's failure to arbitrate, to file a claim in District Court, did not prevail. The Conference Committee rejected the provision in the

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4/ This Court has consistently declined to rule on whether the NLRB correctly held in *Miranda Fuel Co.*, 140 NLRB 181, *enforcement denied*, 326 F.2d 672 (2d Cir. 1963) that all breaches of the duty of fair representation are ULPs. *DelCostello*, 462 U.S.151 text at n. 22.

5/ The existence of the statutory duty of fair representation is one of many differences between the federal and private sector schemes. Under the Reform Act, there is a statutory management rights clause, which restricts the scope of bargaining, §7106(a); a prohibition on the right to strike §7120(f); a right to official time for negotiations, §7131(a); a right to dues withholding, §7114, but there is no right to any form of compulsory union membership.

House bill stating, "All questions of this matter will be considered at least in the first instance by the Federal Labor Relations Authority." H.R. Rep. No.95-1717, 95th Cong., 2d Sess. 157 (1978) *reprinted in 1978 U.S. Code Cong. & Admin. News 2860, 2891.*

These decisions are consistent with a series of cases which have consigned federal unions' claims for contract enforcement exclusively to the FLRA, even though these claims would be judicially enforceable if they involved private sector unions. In *Columbia Power Trades Council v. United States Department of Energy*, 671 F.2d 325 (9th Cir. 1982), the court held that it had no jurisdiction over a suit seeking mandamus of an agency administrator to implement an arbitrator's award. The court held that the FLRA had the exclusive power to enforce an arbitration award in favor of federal employees. In *Yates v. U.S. Soldiers' and Airmen's Home*, 553 F. Supp. 461 (D.D.C. 1982), the court dismissed a suit which attempted to force a federal employer to process employee grievances.

The *Warren* court recognized that §301 would have been the jurisdictional basis for a private sector action against a union, because the action involves both a duty of fair representation and breach of contract claim but found the absence of an analogue to §301 to be dispositive. This result is consistent with this court's decision in *DelCostello v. Teamsters*, 462 U.S. 151 (1983) which held that regardless of whether a fair representation action is brought against the union or the employer, it comprises "two claims (which) are inextricably interdependent...The suit is thus not a straightforward breach of contract suit under §301... but a hybrid §301/fair representation claim." Since a federal employer may not be sued for breach of contract, this critical jurisdictional underpinning of individual employee suits against unions cannot be satisfied in the federal sector. Quite appropriately, the district court dismissed for lack of jurisdiction the claim against the Institute, a federal employer. *Karahalios v. Defense Language Institute*, 534 F.Supp 1202, 1208 (N.D. Cal. 1982). Karahalios did not appeal this dismissal to the Ninth Circuit.

The exception to the preemption doctrine, recognized in *Vaca v. Sipes*, 386 U.S. 171 (1967), for duty of fair representation suits in the private sector, was based on the fact that Congress expressly

authorized suits for breach of the collective bargaining agreement in Section 301 of the Taft Hartley Act. *Accord, Amalgamated Association of Street, Electrical, Railway and Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971). By enactment of §301, Congress created an exception to the NLRB's exclusive jurisdiction. 6/ There are no similar statutory exceptions to the FLRA's jurisdiction. The case at bar presents a different preemption issue, as the question is whether the Reform Act preempts federal question jurisdiction, 28 U.S.C.§1331, as a basis for invoking federal court jurisdiction.

The FLRA's unfair labor practice jurisdiction, which includes enforcement of a statutory duty of fair representation provision, preempts that of state and federal courts. In *Tucker v. Defense Mapping Agency*, 607 F. Supp. 1232 (D.R.I. 1985), the court held that a district court may not entertain a duty of fair representation suit because the FLRA's jurisdiction is exclusive. *Id.*, at 1245. *Accord, Clark v. Mark*, 590 F.Supp 1.8 (N.D.N.Y. 1980). In *Yates*, 533 F.Supp. at 465, the court held that "the Act's enforcement scheme provides no avenue for intervention by district courts .... [A]ny general basis for invoking this court's jurisdiction has been preempted by the Act." Congress made a clear decision to vest in one administrative agency nationwide jurisdiction to adjudicate controversies within the Act's purview. *Local 926, International Union of Operating Engineers v. Jones*, 460 U.S. 669 (1983). Despite the Regional Director's approval of the settlement agreement and the General Counsel's refusal to overturn it, Karahalios sought to relitigage his claim in federal court. "The risk of interference with the (FLRA's) jurisdiction is thus obvious and substantial." *Jones*, 460 U.S. at 683. In *Columbia Power Trades Council*, 671 F.2d at 327, the court held, "Given the broad purpose of the Act to meet

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6/ The duty of fair representation was first fashioned in the context of employees covered by the Railway Labor Act. *See Steele v. Louisville & Nashville Railroad Co.*, 323 U.S. 192 (1944); *Tunstall v. Brotherhood of Locomotive Firemen*, 323 U.S. 210 (1944). Subsequently, the Supreme Court extended the duty to unions certified under the NLRA. *Ford Motor Co. v. Huffman*, 345 U.S.330 (1953). Extension of the duty to unions certified under the NLRA was not automatic, but had to be determined as appropriate in the context of that statutory scheme.

the *special requirements of government*, the leadership role of the Authority, and the limited role of the judiciary in this statutory scheme, it is manifestly the expressed desire of Congress to create an exclusive statutory scheme." (emphasis added) The court noted the unique nature of the Reform Act, which is "designed to meet the special requirements and needs of the Government." 5 U.S.C. §7101(b).

The alleged conduct is clearly covered by the Reform Act, and does not touch on interests deeply rooted in local feeling or responsibility. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). To the contrary, the CSRA was intended to end the patchwork which had existed and to erect a comprehensive scheme providing for only limited judicial review. In *Carducci v. Regan*, 714 F.2d 171 (D.C. Cir. 1983), the court held that the Reform Act barred district court review of any personnel claims, except those involving constitutional claims. In *Carter v. Kurzejeski*, 706 F.2d 835 (8th Cir. 1983), the court held that neither two individuals nor their union had a cause of action in district court to challenge the removal of the employees in retaliation for their union activity. The court held that the Reform Act created substantive rights and that Congress created detailed procedures for enforcing those rights which are exclusive. Likewise, the exclusive forum for enforcing the statutory right to fair representation is the FLRA.

These holdings are consistent with this court's landmark decision in *Bush v. Lucas*, 462 U.S. 367, 388 (1983), which held that the CSRA remedies were exclusive and that the courts should not create a new *Bivens* damages remedy for an employee whose first amendment rights were violated. The question posed by the court is nearly identical to that presented by the case at bar: "When a federal civil servant is the victim of a . . . demotion or discharge .... what legal remedies are available to him ... The question is not what remedy the court should provide for a wrong that would otherwise go unredressed. It is whether an elaborate remedial system that has been constructed step by step, with careful attention to conflicting policy considerations, should be augmented by the creation of a new judicial remedy ...." *Id.* at 381, 387. In

Bush, the Court declined to create a new remedy. Similarly, in the case at bar, the relief fashioned by the Reform Act is exclusive, as it does not allow a private civil action for damages against a federal sector union. Therefore, the Ninth Circuit appropriately found there is no basis for district court jurisdiction.

II. THERE IS NO NEED TO SUPPLEMENT THE FLRA'S REMEDIAL POWERS

The FLRA's prosecution of the case at bar indicates that creation of a new civil remedy for federal employees is not needed. Petitioner suggests that he has not been made whole for his losses. However, the district court itself recognized that Karahalios was not entitled to back pay, since it could not conclude "with a reasonable degree of assurance that but for the Union's improper treatment plaintiff would have obtained the pay and benefits he claims." *Karahalios v. Defense Language Institute*, 613 F. Supp. 440, 449 (N.D. Cal. 1984). While the petitioner now minimizes the value of the posting ordered by the FLRA, the district court placed great value on the relief obtained through the FLRA administrative process. It recognized the value of this relief in applying a "common benefit rationale" to allow recovery by Karahalios of his attorney's fees incurred before the FLRA and in district court. *Id.*, at 450.

The FLRA's role in the arbitration process is quite distinct from that of the NLRB. The FLRA has review authority over all federal sector arbitration awards, except those involving personnel actions which might have been brought before the Merit Systems Protection Board (MSPB) and which are appealable to the U.S. Court of Appeals for the Federal Circuit. 5 U.S.C. §7121(e). FLRA decisions on exceptions to arbitration awards are not appealable. 5 U.S.C. §7123. The FLRA's role in the substantive interpretation of collective bargaining agreements is distinct from the private sector scheme. In *Vaca v. Sipes*, 386 U.S. 71 (1967), the Court refused to apply pre-emption to end district court jurisdiction over these claims. The Court held that fair representation suits often require review of the substantive positions taken and policies

pursued by a union in its negotiation of a collective bargaining agreement and that since "these matters are not normally within the Board's unfair labor practice jurisdiction, it can be doubted whether the Board brings substantially greater expertise to bear on these problems than do the courts." *Id.* at 181. In the federal sector, the FLRA must routinely review contracts in the context of review of arbitration awards, so the FLRA has the expertise which the NLRB lacks.7/

Petitioner's suggestion that the FLRA is shielding unions from financial liability is sharply contradicted by the FLRA's policies in regard to breaches of the duty of fair representation. Since its creation, the Authority has exercised jurisdiction over breaches of the duty of fair representation. *See NTEU Chapter 202 and Department of Treasury*, 1 FLRA 909 (1979); *Federal Aviation Science and Technological Association, NAGE*, 2 FLRA 802(1980); *Tidewater Va Federal Employees Metal Trade Council and Douglas Edward Burns*, 8 FLRA 217, 230-232 (1982). The FLRA has been quite willing to take the offensive in this area.

In appropriate cases, the FLRA will award employees back pay against unions which have breached the duty of fair representation. In *International Association of Machinists, Lodge 39 and Roy G. Evans*, 24 FLRA 352 (1986), the FLRA ordered that the union ask the employer for permission to file a late grievance, and that if permission were refused, the union would be obligated to pay the employee the amount of earnings lost during the period of suspension. *See also Federal Employees Metal Trades Council, Portsmouth Naval Shipyard and Robert Fall*, 12 FLRA 276, 282 (1983) (General Counsel sought back pay, at n. 3).

7/ Likewise, other concerns voiced by this Court in *Vaca* to justify an exception to *pre-emption* are inapplicable to the federal sector. In the federal sector, the balance between individual and collective interests favors the individual more than it does in the private sector, and therefore, there is less need for a judicial right of action for breaches of the duty. An employee who is distrustful of his union may file a grievance on his own, although only the union may invoke arbitration. *See* 5 U.S.C. §7121(b)(3)(B), (C). Notwithstanding the existence of a negotiated grievance procedure, an employee may still appeal a removal or major suspension to the MSPB. *See*, 5 U.S.C. §7121(e)(1). Finally, federal sector unions may not negotiate any form of compulsory union membership.

The FLRA has taken an aggressive stance concerning the application of the duty of fair representation. In its decisions, it tried to extend the duty to statutory appeals covered by 5 U.S.C. §7701, but the FLRA was twice reversed by the courts of appeals, which took a narrower view of the duty. In *National Treasury Employees Union v. FLRA*, 800 F.2d 1165 (D.C. Cir. 1986), the court reversed an FLRA decision that the union committed a ULP by failing to provide attorneys for non-union members in statutory appeal proceedings, where it provided union members with attorneys in those proceedings. The court rejected the FLRA's view that §7114(a)(1) stated a duty broader than that implied in the private sector. In *American Federation of Government Employees v. FLRA*, 812 F.2d 1326 (10th Cir. 1987), the 10th Circuit adopted the reasoning of the D.C. Circuit in *NTEU* and held that the doctrine of fair representation did not apply to Merit Systems Protection Board proceedings. Thus, the FLRA tried to broaden the duty of fair representation, although its view was rejected by the courts. 8/

III. THE CONFLICT IN THE CIRCUITS IS MORE APPARENT THAN REAL

As its primary basis for acceptance of the petition for certiorari, petitioner relies upon a claimed conflict in the circuits regarding district court jurisdiction over fair representation cases brought by federal employees. Petitioner asserts that five courts of appeals have considered this issue. One of these, the Fourth Circuit, merely affirmed without an opinion, the district court decision in *Naylor v. American Federation of Government Employees, Local 446*, 580 F. Supp. 137 (W.D.N.C. 1983), *aff'd without opinion* 727 F.2d 1103 (4th Cir. 1984), *cert. denied*, 469 U.S. 850 (1984). The District Court did hold that it had jurisdiction over a fair representation claim brought by a federal employee, although on the merits, which were addressed in the same opinion, it denied the claim. Thus, the Fourth Circuit has not addressed the jurisdictional issue.

8/ The FLRA recently adopted the narrower view of the duty of fair representation. *Ft. Bragg Association of Educators, National Education Association and Fort Bragg Department of Defense Dependants Schools*, 28 FLRA No. 118 (1987).

The Tenth Circuit squarely addressed this issue in *Pham v. American Federation of Government Employees, Local 916*, 799 F.2d 634, 639 (10th Cir. 1986), and did reach a result contrary to that of the Eleventh Circuit in *Warren v. Local 1759, American Federation of Government Employees*, 764 F.2d 1395, 1399, *cert. denied*, 106 S.Ct. 527 (1985), and to that of the Ninth Circuit in the decision below. The Third Circuit has affirmed, in an unreported memorandum decision, a district court holding that it lacked jurisdiction to hear the employee's claims in this situation. *Wilson v. United States Bureau of Prisons*, No. 84-5735 (1985).

A more recent decision of the Tenth Circuit completely undercuts the result reached in *Pham* and suggests that there may not be any conflict in the circuits. In *Pham*, the court minimized the significance of the absence of a §301 parallel in the Reform Act and avoided the pre-emption issue by holding,

> the duty of the union which is the focus of this suit is not the same as the union's statutory mandate not to discriminate on the basis of union membership found in 5 U.S.C. §7114(a)(1). That section does not encompass the same duty that has been described as the duty of fair representation. The duty of fair representation is much broader than a simple prohibition against treating union members differently from other employees in the same bargaining unit. 799 F.2d at 639.

This reasoning was implicitly repudiated in a more recent decision of the Tenth Circuit, *American Federation of Government Employees Local 916 v. FLRA*, 812 F.2d 1326 (1987). There the court approvingly cited the following language from the decision of Judge Bork in *National Treasury Employees Union v. FLRA*, 800 F.2d 1165 (D.C. Cir. 1986).

> The Supreme Court in *Steele* and subsequent cases drew from the first sentence of §9(a) of the NLRA an implication of a duty that is substantially expressed in the second sentence of 5 U.S.C. §7114(a)(1)(1982), the federal sector provision. The logical, and we think .... conclusive, inference is that when Congress came to write section 7114(a)(1) it included a first sentence very like the first sentence of section 9(a) and then

> added a second sentence which summarized the duty the Court had found implicit in the first sentence. In short, *Congress adopted for government employee unions the private sector duty of fair representation* (emphasis added). 800 F.2d at 1171.

The Tenth Circuit holding was identical to that of the D.C. Circuit. By now holding that §7114(a)(1) constitutes a codification of the private sector duty of fair representation, the 10th Circuit has eliminated a crucial underpinning of its decision in *Pham*. The Tenth Circuit should be given an opportunity to resolve this gross inconsistency before this Court agrees to hear a federal sector fair representation case addressing the issue of a private cause of action.

CONCLUSION

For the aforesaid reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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